THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.Nos.5416 and 5439 of 1999

COMMON ORDER:

In both these writ petitions, common questions of law and fact arise for consideration, therefore, they are being disposed of by this common order.

For the purpose of convenience, the facts enumerated in W.P.No.5416 of 1999 are taken into consideration.

According to the petitioners, they joined in Singareni Collieries Company Limited in various capacities. It is their complaint that their juniors are drawing more salary compared to their salary. According to petitioners, the Joint Bipartite Committee for Coal Industry (JBCCI) comprises of all the managements of the coal industry and the workmen are represented by the recognized union. The decisions of the Bipartite Committee are binding on all the managements of the Coal Industry including the Singareni Collieries Company Limited, which is a member of the JBCCI. The Chairman, Coal India Limited, Calcutta is the Chairman of JBCCI. The JBCCI-V has discussed the issue with regard to anomaly in pay arising out of senior employees in the same pay scale, covered by the same seniority list and same designations in a cadre getting lower pay than their juniors as a result of implementation of NCWA-IV. Ultimately, the committee in its meeting held on 21.8.1996 has resolved to remove the said anomalies. Accordingly, a Circular No.CIL/C-5B/JBCCI-V/I.V No.18/96/639 dated 18.9.1996 was issued directing all the managements of the Coal Industry to rectify the anomaly. The relevant paragraphs of the said circular read as under:

"1. When the senior employee promoted to a higher post before 1st July 1991 draws less pay in the revised

scale than his junior who is promoted to the higher post on or after 1st July 1991.

2. Senior employee in the same pay scale and covered by the same seniority list in a cadre and who has secured fixation at the same stage as his junior, but due to different dates of increment the junior starts getting higher pay than his senior. The removal of such anomalies will be subject to the following conditions:

a) both the junior and senior employees should belong to the same cadre and the post in which they have been promoted should be covered by the same seniority list and same care.

b) the pre-revised and revised scale of pay of lower and higher post in which they are entitled to draw pay should be identical.

c) the anomaly should be directly as a result of application of normal rules of fixation on such promotion in the revised scale of pay and as a result of fixation of pay in the revised scale of under NCWA-V. The next date of increment of the senior employee will be the same as that of the junior employee. If even in the lower post, the junior employee was drawing more pay in the pre-revised pay scale than the senior by virtue of any advance increment granted to him, these provisions shall not apply in such cases.

It has to be ensured for removal of anomalies the basic conditions stipulated above are fulfilled before initiating any action.

This will apply to cases arising on or after 1st July 1991.

You are requested to take necessary action to implement the above decision".

Thus, the simple case of the petitioners is that their juniors are drawing more salary compared to their salary, which is an anomaly and needs to be rectified.

A detailed counter affidavit has been filed by the respondents 1

and 2 denying the allegations made by the petitioners and asserted that petitioners worked in various capacities. They were promoted to Category-VI with effect from 1.4.1991. Whereas, respondents 3 and 4 were initially appointed as I.T.I. apprentices and were promoted to Category-V on 1.6.1982 and later they were placed in Category-VI with effect from 1.9.1991. The basic pay of the petitioners was fixed at Rs.62-64 ps. in Category-VI as on 30.6.1991 under NCWA-IV and the basic pay of respondents 3 and 4 was fixed as Rs.59-08 ps. in Category-V as on 30.6.1991 under NCWA-IV. The basic pay of the petitioners was fixed at Rs.90-58 ps. in Category-IV as on 1.9.1991 under NCWA-V. Likewise, the basic pay of respondents 3 and 4 was fixed at Rs.94-12 ps. in Category-VI as on 1.9.1991 under NCWA-V. The anomaly in pay fixation had arisen in view of implementation of revised pay scales under NCWA-V, but such anomalies are not to be rectified, as mentioned in the last para of Circular No.P.49/5190/IR/1607 dated 4.10.1996. The anomalies are to be rectified in case of daily rated employees promoted to monthly rated and monthly rated employees promoted to higher monthly rated only, whereas petitioners were promoted from daily rated category to higher daily rated category only. Thus, the petitioners are not eligible for rectification of basic anomaly under circular dated 4.10.1996. As regards removal of anomalies, JBCCI issued guidelines which provides for removal of anomaly only where the workers promoted from daily rated to monthly rated and from monthly rated to higher monthly rated. These are the basic conditions stipulated by JBCCI for removal of anomaly and the petitioners do not fit into it. Though, an anomaly had arisen, it cannot be rectified.

Heard both sides.

Admittedly, petitioners are seniors to respondents 3 and 4 and

were promoted from daily rated to higher daily rated category. According to respondents 1 and 2, juniors to the petitioners who remained in daily rated category have reached the highest point in the pay scales. Though petitioners were promoted to higher daily rated category, in view of revision of pay scales and its implementation under NCWA-V, anomalies have arisen. There is no dispute as to this aspect, but the assertion made by the respondents 1 and 2 is that JBCCI circular dated 1.11.1991 has no application to the case of petitioners and the said circular is applicable only in cases of anomalies which had arisen, where daily rated workers are promoted as monthly rated workers and monthly rated workers are promoted as higher monthly rated workers, but not in case of petitioners who were promoted from daily rated to higher daily rated category, which is not contemplated under the said circular. Further, the circular dated 1.11.1991 needs to be read with the decision taken by the Standardization Committee at its meeting held on 18.6.1980 at Calcutta, which reads as under:

> "Anomalies arising out of senior employees promoted prior to 1.1.1975 (when NCWA-I was implemented) getting lower pay than their juniors promoted after 1.1.1975, both the seniors and juniors being in the same pay scales, same designation and covered by the same seniority list in a cadre was taken up for discussion. It was noted that this issue was not settled even though it was taken up for consideration during the period when NCWA-I was in force. It was suggested that since such anomalies have been agreed to be rectified as per the decision taken up by the Standardization Committee on 26.2.1980 and as incorporated in I.I.No.26 dated 6.3.1980 it is agreed that such anomalies would be rectified if they are still persisting between the seniors and juniors in the same pay scale, with the same designation and covered by the same seniority list in a cadre as on 1.1.1979. However, the rectification in such cases will be done only with effect from

> 1.1.1979 and no arrears will be payable to the employees concerned for the period prior to 1.1.1979. That is to say, such individual cases will be checked up and where such an anomaly had occurred and was still persisting as on 1.1.1979 the pay of the senior employees in the individual cases will be stepped up to the level of junior employees, concerned with effect from 1.1.1979. This decision will however, apply to (a) daily rated employees promoted to monthly rated employee and (b) monthly rated employee promoted to higher monthly rated posts in a cadre and covered by the same seniority list".

It is unfortunate that the respondents 1 and 2 have taken a stand that the cause of the petitioners is not supported by the policy guidelines made by JBCCI in circular dated 28.12.1989 and dated 4.10.1996. The contention of the respondents 1 and 2 that the petitioners are not entitled for rectification of anomalies seems to be their own idea and not supported by any circulars. The decision taken by the Standardization Committee at its meeting held on 18.6.1980 has no application to the facts of the case. Further, in the JBCCI circular dated 28.12.1989, it was categorically indicated that anomalies that had arisen after 1.1.1987 needs to be rectified from the date the junior was promoted giving rise to anomaly in question. Further, it was desired that for removal of anomaly, the basic conditions stipulated above would have to be fulfilled before initiating any action. The conditions prescribed in circular dated 28.12.1989 read as under:

> "It has been pointed out that in some cases, employees who are senior in the same pay scales and covered by the same seniority list in a cadre have secured fixation at a lower stage than their juniors in the same cadre who were promoted after 1.1.1987 (after implementation of NCWA-IV) even though the said senior employees were getting prior to their promotion the same pay or higher pay in NCWA-III pay scales as their cases will be checked up and where such an anomaly has

> occurred, the pay of senior employees in the individual cases will be stepped up to the level of the pay of junior employees concerned from the date the anomaly has arisen (i.e.) after 1.1.1987 and from the date the junior was promoted giving rise to the anomaly in question. It has to be ensured that for the removal of the anomalies, the basic conditions stipulated above would have to be fulfilled before initiating any action."

The letter dated 24.1.1990 issued by the Singareni Collieries Company Limited, Kothagudem states that the circular instructions dated 28.12.1989 will apply only to (a) daily rated employees promoted to monthly rated and (b) monthly rated employees promoted to higher monthly rated posts in a cadre and covered by the same seniority list as was followed earlier under NCWA-III. The circular dated 4.10.1996 contemplates that individual cases of anomalies may be checked up carefully and after satisfying that anomaly has arisen in the case of senior employee in the same seniority list and same designation in a cadre the pay of senior employee will be stepped up to the level of pay of junior employee concerned from the date the anomaly had arisen i.e. from the date the junior employee started getting higher basic pay than the senior employee.

Of course, in these circulars or in the decision of Standardization Committee, it is no where indicated that the daily rated employees promoted to higher daily rated are entitled for rectification of anomalies, but the recent circular dated 4.10.1996 contemplates rectification of anomalies in individual cases also. Simply because, in the previous circulars the anomalies that may arise between the seniors and juniors working in daily rated and higher daily rated category are not mentioned, it does not mean that the petitioners are not entitled for rectification of anomaly which had arisen in the category of daily rated workers, to be precise, daily rated workers

(juniors) and higher daily rated workers (seniors - petitioners). The fact that juniors who are in the daily rated workers category are drawing more salary than the seniors whose posts were upgraded to that of higher daily rated category is not in dispute. Petitioners being seniors, they were put in higher daily rated category, but while implementing NCWA-V, the daily rated workers who are juniors to petitioners, are getting more salary than petitioners. There is no necessity of going into other details since the arbitrariness is writ large. Even assuming that the circulars did not take care of the situation, which had arisen in this case, while borrowing the general principles of equality as enshrined in Articles 14 and 16 of the Constitution of India, respondents could not have denied petitioners the salary on par with their juniors who are in the daily rated category in the guise of implementation of NCWA-V. Therefore, I am of the opinion that the petitioners are entitled for rectification of anomaly that had arisen while implementing pay scales in NCWA-V and are entitled for payment of salary on par with their immediate juniors. Further, there is no reason forthcoming and there is no rationality and the objects sought to be achieved by denying such rectification of anomaly in respect of daily rated workers those were promoted as higher daily rated workers. If it is said that the daily rated workers and higher daily rated workers are separate category, it is the same case with the daily rated employees prompted to monthly rated and monthly rated employees promoted to higher monthly rated category. Therefore, the stand taken by the respondents 1 and 2 that the cases of the petitioners being isolated one and it is not contemplated in circulars issued earlier, and therefore, they are not entitled for rectification of anomaly, cannot be countenanced. This is nothing but arbitrary and capricious.

For all the above reasons, the respondents are directed to rectify the anomaly arisen out of the senior employees promoted from daily rated category to higher daily rated category compared to their juniors in the daily rated category and pay all the arrears and other benefits to the petitioners that may arise out of the said anomaly, within a period of (8) weeks from the date of receipt of this order.

Accordingly, both the writ petitions are allowed. No order as to costs.

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C.V.RAMULU, J

Date: .12.2007
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THE HON'BLE SRI JUSTICE C.V.RAMULU

28.12.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.Nos.5416 and 5439 of 1999

Date: 28th December, 2007

W.P.No.5416 of 1999

Between:

Md.Osman Quadri & others.

.. Petitioners

And

Singareni Collieries Company Ltd.,
Kothagudem, Khammam district, rep. by its
Chairman and Managing Director & others.

.. Respondents

W.P.No.5439 of 1999

Between:

S.Hussaini & others.

.. Petitioners

And

Singareni Collieries Company Ltd.,
Kothagudem, Khammam district, rep. by its
Chairman and Managing Director & others.

.. Respondents